Submitted
Wilds

Judge Davis

53

Nov 30

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~207~~ 6

THE TOWN OF VENICE, PLAINTIFF IN ERROR,

vs.

WILLIAM L. MATSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 16, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 267.

THE TOWN OF VENICE, PLAINTIFF IN ERROR,

vs.

WILLIAM L. MATSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Declaration or complaint	2	1
Pleas or answer	7	7
Trial and verdict	19	11
Order allowing sixty days to make bill of exceptions, &c	20	12
Judgment signed	21	12
Bill of exceptions	22	12
Bond for supersedeas and costs on writ of error	50	19
Writ of error	55	21
Citation	56	21
Clerk's certificate	58	22

1 United States circuit court, northern district of New York.

Pleas before the judges of the circuit court of the United States of America for the northern district of New York, at the city of Albany, at the October term of said court, held at said city, on the second Tuesday of October, A. D. 1872.

Witness the honorable Lewis B. Woodruff, judge.

CHARLES MASON, *Clerk.*

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, at the October term of said circuit court, A. D. 1872, to wit, the 2d day of January, 1873, came William L. Matson, by his attorney, David Wright, and brought into said court his certain declaration or complaint against The Town of Venice; which said declaration or complaint was and is in the words and figures following, to wit:

2 United States circuit court, northern district New York, of the term of October, to wit, the 2d day of January, 1873, as yet of the term of October, 1872.

WILLIAM L. MATSON
vs.
THE TOWN OF VENICE.

NORTHERN DISTRICT OF NEW YORK, *ss:*

William L. Matson, plaintiff in this action, by David Wright, his attorney, brings this his action against The Town of Venice, defendant, and by this his complaint says and shows to the court here:

That he, the said plaintiff, is not a citizen or resident of the State of New York, but that he is a citizen of the State of Connecticut, and a resident of the city of Hartford, in said State of Connecticut; that the defendant, the said Town of Venice, is one of the towns of the county of Cayuga, in said State of New York, and within the northern district of New York.

That said defendant is a municipal corporation for certain purposes, and amongst others of sueing and being sued, upon contracts. And for a first count, or cause of action, the said plaintiff says and avers:

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signature, a bond or bonds, on which the interest should be made payable annually, or semi-annually, during the term said money might be borrowed, and the principal and interest of which loan should be made payable in such sums,

and at such times and place, as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners, by section first of said act, should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect, by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should, at all times, be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act, until a railroad company had been duly organized according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid, comprise two thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid, comprised two-thirds of the resident tax-payers of said town of Venice on its assessment roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of Venice.

3 That, afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of said town of Venice, according to said act, and by virtue thereof, under their

several signatures, duly executed a certain writing obligatory, or bond of said town, bearing date the said 2d day of March, 1853, and numbered six in the series of bonds executed under and in virtue of said act, whereby the said Town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay, to the bearer of said bond No. six, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursed at the same place, at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King, and Jonas Wood and Isaac Smith, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them, as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. six thirty-nine several coupons, or promises to pay, the semi-annual interest of thirty-five dollars each, which would become due and payable, upon the expiration of each and every six months from and after the first day of January, one thousand eight hundred and fifty-four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The Town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. six."

That, afterwards, and before said bond No. six was negotiated or delivered by said Town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga at the request of the said Town of Venice, made and endorsed upon bond No. six his certificate in writing, duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said town of Venice, borrowed, on the faith and credit of said Town of Venice, of , a person unknown to this plaintiff, the sum of one thousand dollars, for the purpose and in accordance with the provisions, and in virtue of said act of said legislature; and to secure the payment thereof with interest thereon, at the rate of seven per cent. per annum, from the time of such borrowing, delivered the said bond No. six, with the coupons hereinbefore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said unknown person, lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That, afterwards, to wit, on the first day of January, 1857, at the city

of Hartford, in said State of Cincinnati, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became, and has ever since continued to be, and now is, the owner, holder and bearer of said bond No. six, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. six, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said Town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said Town of at any time since, had, at the said The Bank of the State of New York, in the said city of New York, or elsewhere, any money or means, whereby the said several sums acknowledged by said Town of Venice to be due, could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since; and although often requested so to do, the said Town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums, in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified. And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1856, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid, and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse, to pay the same or any part thereof to him, the said plaintiff.

4 Second. And for a further and second cause of action the said plaintiff further says and avers—

That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled, "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad;" whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the said the county of Cayuga, and the assessors of such town in said county, who were appointed by said act as commissioners to act in conjunction with said supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of said town, such sum of money as they, said supervisor and assessors, might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually, or semi-annually, during the term said money might be borrowed; and the principal and interest of which loan should be made payable in such sums, and at such

times and place, as should be agreed upon and expressed in the bonds duly executed under the authority of said act.

And wherein and whereby it was further enacted that said assessors, appointed to act as commissioners by section first of said act, should hold their office till the next annual town meeting of their town, when it should be the duty of the electors of said town to elect, by ballot, in the same manner that town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act, and that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act.

That it was in said act further provided that the said supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad company had been duly organized, according to the requirements of the general railroad law, for the purpose of constructing the aforesaid described railroad, to wit, a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and until the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of such town, made next previous to the time such money may be borrowed, shall have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor or commissioners, or any two of them, attached to such statement, to the effect that the persons whose written assents are thereto attached and filed as aforesaid, comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, passed April 2d, 1850, for constructing, maintaining and operating a railroad for public use, in the conveyance of persons and property, commencing at some point on the Susquehannah and Cayuga Railroad, to wit, about seven miles from the village of Ithaca, in the county of Tompkins and State of New York, and extending thence to the city of Auburn, and thence to the termination of said railroad at Little Sodus Bay, in the town of Sterling, Cayuga County.

That the written assent of two-thirds of the resident persons taxed in said town of Venice, as appeared on the assessment-roll of said town of Venice made next previous to the time of borrowing the money authorized by said act, had been obtained in pursuance of said act, and filed in clerk's office of Cayuga County, together with the affidavit required by said act attached to said written assents and statement, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of the resident tax-payers of said town of on its assessment-roll next previous to the obtaining said written assents, before the execution and delivery of any bonds by said supervisor and commissioners of said town of .

That afterwards, to wit, on the 2d day of March, 1853, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town of Venice, theretofore duly elected by the electors of the said town of Venice, according to said act and by virtue thereof, under their several signatures duly executed a written obligatory, or bond, of said town,

bearing date the said 2d day of March, 1853, and numbered seven in the series of bonds executed under and in virtue of said act, whereby the said Town of Venice, in pursuance of the said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. seven, the sum of one thousand dollars, with interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be re imbursed at the same place at the expiration of twenty years from the first day of January, 1853.

That the said Calvin King, and Jonas Wood and Isaac Smith, as such supervisor and railroad commissioners as aforesaid, and under their official signatures, at the same time of the execution of said bond by them as aforesaid, to wit, on the said second day of March, 1853, duly attached to said bond No. seven thirty-nine several coupons, or promises to pay, the semi-annual interest of thirty-five dollars each, which would become due and payable upon the expiration of each and every six months from and after the first day of January, one thousand eight hundred and fifty four, until the first day of January, one thousand eight hundred and seventy-three, each and every of which coupons was substantially in the following form, except the time of payment therein specified, to wit:

"$35. The Town of Venice, in the county of Cayuga, hereby acknowledges that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of , being interest due on that day on bond No. seven."

That afterwards, and before said bond No. seven was negotiated or delivered by said Town of Venice to any person, to wit, on the 16th day of May, 1853, the then clerk of said county of Cayuga, at the request of the said Town of Venice, made and endorsed upon bond No. seven his certificate in writing duly signed by him in his official character as such clerk of said county of Cayuga, whereby he, the said clerk, under his said official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said Town of Venice, with the affidavit required by section one of the act referred to by its title in said bond, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond and coupons as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said Town of Venice had been obtained and filed as aforesaid, together with the affidavit required by section one of said act, to wit, on the first day of January, 1854, at the said Town of Venice, borrowed, on the faith and credit of said Town Venice, of , a person unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of said legislature, and to secure the payment thereof with interest thereon, at the rate of seven per cent. per annum, from the time of such borrowing, delivered the said bond No. seven, with the coupons heretofore mentioned thereto attached, and the said certificate of the clerk of the county of Cayuga hereinbefore mentioned thereon endorsed, to him, the said , lender of said money, who thereby, then and there, became and was the owner, holder, and bearer thereof.

That afterwards, to wit, on the first day of January, 1857, at the city of Hartford, in said State of Connecticut, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and became,

and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. seven, together with the said coupons thereto attached, all of which then remained unpaid. And the said bond No. seven, with the said coupons attached, was thereupon then and there delivered to him, the said plaintiff, and the same has ever since continued and remained, and still remains, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive the monies due and remaining unpaid thereon, and also the monies thereafter to become due and payable thereon, when, and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that the said Town of Venice had not, at the time the moneys mentioned in said bond and in said several coupons became due and payable, nor has said Town of Venice at any time since had, at the said the Bank of the State of New York, in the said city of New York, or elsewhere, any money or means whereby the said several sums acknowledged by said Town of Venice to be due could be or would have been paid, had a demand thereof been made when the same became due and payable, as provided in and by the terms of said bond, and of said several coupons, nor at any time since; and although often requested so to do, the said Town of Venice has hitherto wholly refused, and still does refuse, to pay the said several sums in said coupons and said bond specified, and being the principal and interest which accrued upon said bond from the first day of January, 1854, to the first day of January, 1873, and which became due and payable to the owner of said bond and said coupons on said several days, in that behalf hereinbefore specified. And said plaintiff further avers that the whole of the said principal sum of one thousand dollars, together with the interest thereon from the first day of January, 1856, and the interest upon the several sums so as aforesaid mentioned in said several coupons, from the time the same severally became due and payable, still remain due and unpaid; and said defendant, although often requested so to do, has hitherto wholly refused, and still does refuse to pay the same or any part there'f to him, the said plaintiff.

Whereupon the plaintiff demands judgment against said Town of Venice for the principal and interest due upon said several bonds and the coupons thereto attached, to the amount of five thousand dollars, together with the costs of this action.

D. WRIGHT,
Plff.s' Atty., Auburn, N. Y.

(Endorsed:) C. C. U. S., N. D. of N. Y. William L. Matson vs. The Town of Venice. Declaration or complaint. D. Wright, plffs. atty., Auburn, N. Y. Filed January 2, 1873.

6 And afterwards, to wit, on the 20th day of January, 1873, the said defendant appeared in said action by Warren A. Worden, its attorney, and filed its answer to the said declaration or complaint of the said plaintiff; which said answer was and is in the words and figures following, to wit:

7 Circuit court of the United States for the northern district of New York.

WILLIAM L. MATTSON *agt.* THE TOWN OF VENICE. } Second suit.

And the said defendant, The Town of Venice, above named, by Warren A. Worden, its attorney, comes and defends this action, and says

that it denies the whole of the said plaintiff's complaint herein, & each and every allegation therein contained, except that it is admitted that it was provided in and by said act mentioned, and referred to in said complaint, that the supervisor and commissioners should have no power to do any of the acts authorized by said act until a railroad was formed, nor until the written assent of two-thirds of the resident taxpayers of said town was obtained and filed, together with the affidavit, and as in said complaint stated and set forth.

Second. And for a further and second defence herein, the said
8 defendant says that the said plaintiff ought not to have or maintain this action herein against this defendant, because it says that the said defendant, The Town of Venice, is not a citizen of the State of New York, and that this court has no jurisdiction over this defendant, The Town of Venice.

Third. And for a further and third defence herein, the said defendant says that the said plaintiff ought not to have or maintain this action against this defendant to recover so much or any part or portion of the interest which it is alleged in said complaint accrued, or became, or was due and payable on the said alleged bonds and coupons in said complaint mentioned, on or before the first day of January, eighteen hundred and sixty-seven, because it says that heretofore, to wit, on or about the twenty-second day of March, eighteen hundred and sixty-seven, as of the term of March, 1867, to wit, of this the 19th day of March, as yet of the said term of March, one thousand eight hundred and sixty seven, the said plaintiff duly and legally impleaded this defendant in this court, by duly and legally commencing an action on
or about that day in this court against this defendant, to recover
9 the interest which had accrued on said alleged bonds and coupons in said complaint mentioned prior to the first day of January, eighteen hundred and sixty-seven, as by reference to the declaration and pleadings in said action will more fully and at large appear, and to which this defendant prays leave to refer, if it shall be necessary for it so to do; that this defendant duly and legally appeared in said action, and interposed various pleas by way of defence thereon, and that such proceedings were and have been had in such action, so commenced in this court by the said plaintiff against this defendant, to recover said interest as aforesaid; that issues of fact rose and have been joined in said action, and which said issues thus joined, & before the commencement of this action, came on to be tried at a circuit court of the United States for the second circuit and northern district of New York, before the honorable Nathan K. Hall, judge of said district, and one of the judges appointed by law and authorized to hold said circuit, and a jury and a
verdict rendered for the said plaintiff for said interest; that the
10 verdict now remains in full force and effect, and that the said action, so commenced by the said plaintiff to recover said interest as aforesaid, is now pending and undetermined in said court, the same never having been discontinued, settled, or ended in any way whatsoever, as by reference to the pleadings, proceedings, and verdict in said action as aforesaid will more fully and at large appear, and to which this defendant prays leave to refer, if it shall be necessary for it so to do.

Fourth. And for a fourth and further defence herein the said defendant says that the said plaintiff ought not to have or maintain this action against this defendant to recover the said several sums of money alleged in said complaint to have accrued by way of interest upon said alleged bonds and coupons in said complaint mentioned on and prior to the first day of January, eighteen hundred and sixty-seven, because it

says the same did not, nor did any or either of them, or any part or portion thereof, accrue or become due and payable within six
11 years next before the commencement of this suit; and as to the remaining portion of said several sums of money in said complaint mentioned the said defendant says it does not owe the same, or any or either of them, or any part or portion thereof, either in manner & form as is stated and set forth in said complaint or otherwise.

Fifth. And for a further and fifth defence herein the said defendant says that the said plaintiff ought not to have or maintain this his aforesaid action thereof against this defendant, because it, the said defendant, says that the said several supposed causes of action in the said complaint mentioned did not, nor did any or either of them, accrue to the said plaintiff at any time within six years before the commencement of this suit, in manner and form as the said plaintiff hath above thereof complained against this the said defendant, or otherwise.

Sixth. And for a further and sixth defence herein the said defendant says that the said plaintiff ought not to have or maintain this action against this defendant, because it says that the said several sup-
12 posed bonds and coupons in said complaint mentioned and referred to are not, nor are any or either of them, the deed, obligation, promise, or undertaking of this defendant, in any way or for any cause whatsoever.

Seventh. And for a further and seventh defence herein the said defendant says that the said plaintiff ought not to have or maintain this action against this defendant, because it says that the said Calvin King, in said complaint mentioned, was not the supervisor, nor was Jonas Wood and Isaac Smith, in said complaint mentioned, or either of them, assessors of the said town of Venice at the time when said act, entitled "An act to authorize any town the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad, passed April 16, 1852," and mentioned and referred to in said complaint, was passed by the legislature of the State of New York, or when the same became a law and statute of said State, as in said complaint stated and set forth; and that the said Calvin King, Jonas Wood,
& Isaac Smith, in said complaint mentioned, never were, nor
13 were any or either of them, ever the agents of said town for the purpose of executing or delivering for the said defendant, The Town of Venice, the said supposed bonds or coupons in said complaint mentioned, or any or either of them, in any way, or for any cause or purpose whatsoever; nor were they, the said Calvin King, Jonas Wood, and Isaac Smith, or any or either of them, ever authorized or empowered, in any way or manner, or for any cause whatsoever, to execute or deliver for said town of Venice the said supposed bonds and coupons in said complaint mentioned, or any or either of them, in any way or for any cause or purpose whatsoever, and that the interest secured to be paid in and by the said several supposed bonds. and each and every one of them, exceeds the sum of seven per cent. per annum.

Eighth. And for a further and eighth defense herein, the said defendant says that the said plaintiff ought not to have or maintain this action herein against this defendant, because it says that the said several supposed bonds & coupons in said complaint mentioned were not, nor
14 were any or either of them, ever executed or delivered for any money borrowed or agreed to be borrowed on the faith and credit of the said town of Venice, the defendant herein, according to the conditions and requirements of said act entitled "An act to authorize any

town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," passed April 16th, 1852. And being the same act mentioned and referred to in said plaintiff's complaint herein; but, on the contrary thereof, the said defendant says that the said several supposed bonds and coupons in said complaint mentioned were each and every one of them delivered by the said Jonas Wood to the said "the Lake Ontario, Auburn and New York Railroad Company," mentioned and referred to in said complaint, for stock subscribed for and taken by the said Jonas Wood, Isaac Smith, and Calvin King in the said railroad, and which was the first and only negociation and delivery of said alleged bonds and coupons in said complaint mentioned by the said Jonas Wood or any other person
15 or persons whomsoever, and that such negotiation and delivery was without authority and unauthorized, and was illegal and void, and in violation of the terms and requirements of the act of the legislature of the State of New York above mentioned and referred to, and that at the time when the said plaintiff became as is alleged in said complaint the owner and holder and bearer of the said alleged bonds and coupons in said complaint mentioned and referred to, there was due and unpaid on each of the said alleged bonds and coupons respectively a large sum of money, to wit, the sum of two hundred and ten dollars or thereabouts for interest then due and unpaid on the said bonds & coupons mentioned and referred to in said complaint, and that he the said plaintiff well knew that such interest was due and unpaid on the same respectively, and that he, the said plaintiff, became such supposed owner, holder, and bearer of them and each of them respectively not in the ordinary course of business, and with such knowledge as aforesaid, and without a bona-fide valuable consideration by him paid for the
16 same, and with full knowledge of the original delivery of said alleged bonds and coupons to said railroad company as aforesaid, and that he, the said plaintiff, is not a bona-fide owner & holder or bearer of said alleged bonds & coupons or any or either of them for a valuable consideration paid, and in the ordinary course of business with or without such knowledge as aforesaid.

Ninth. And for a further and ninth defence herein, the said defendant says that the said plaintiff ought not to have or maintain this action against this defendant because it, this defendant, says that the supervisor of the town of Venice, and the assessors of said town in office when said act of the legislature of the State of New York in said complaint mentioned and referred to was passed and became a law, did not, nor did any or either of them, or any other person or persons or officer or officers whomsoever ever obtain or file in the clerk's office of Cayuga County the written assent of two-thirds of the resident tax-payers of said town as appeared on any assessment-roll of said town as
17 required by said act, and that the said town of Venice never was authorized or empowered in any way whatsoever or for any cause or purpose whatsoever, nor was any person or persons, officer & officers whomsoever, ever authorized or empowered in any way or manner whatsoever or for any cause or purpose whatsoever to borrow any money or to execute or deliver for the said defendant, the said Town of Venice, the said several alleged bonds and coupons in said complaint mentioned or any or either of them, in any way or manner or for any cause or purpose whatsoever, and that the same are illegal and void and of no force or effect whatsoever. Wherefore this defendant, The Town of Venice,

demands judgment herein with its reasonable costs & charges in this behalf expended.

Dated Auburn, January 15th, 1873.

WARREN A. WORDEN,
Def's Atty., Auburn, N. Y.

WARREN T. WORDEN,
Of Counsel for said Defendant, Auburn, N. Y.

State of New York, U. S. circuit court.

NORTHERN DIST. OF NEW YORK,
Cayuga County, ss:

18 Herman Moshier, of the town of Venice, in said county of Cayuga, being duly sworn, deposeth and says that he is the supervisor of the said town of Venice, and that he has fully and fairly stated this case, and the grounds of the defendant's defence herein, to Warren T. Worden, of Auburn, in said county of Cayuga, one of the defendant's counsel herein, and that the said defendant has a good and substantial defence upon the merits in this action, as he is advised by his said counsel, Warren T. Worden, & counsel for said defendants herein, and verily believes to be true.

HERMAN MOSHIER,
Supervisor.

Sworn and subscribed to before me this 18th day of January, 1873.
CHARLES L. ADAMS,
U. S. Commissioner Northern Dist. of New York.

I hereby certify that I have advised the above-named Herman Moshier that the defendant above named has a good & substantial defence upon the merits in said action, as stated in the above affidavit of the said Herman Moshier.

And I further certify that the above answers are, each and every of them, *are*, in my opinion, well founded.

Dated Auburn, N. Y., January 18th, 1873.

WARREN T. WORDEN,
Of Counsel for said Deft., The Town of Venice.

(Indorsed:) Circuit court U. S., north'n dis. of N. Y. William L. Matson ag'st The Town of Venice. Dr. Answer. Warren A. Worden, deft.'s atty., Auburn, N. Y. Filed Jan'y 20, 1873.

19 And thereupon the issue above joined came on to be tried at the June term of said court, held at the village of Canandaigua, on the 19th day of June, A. D. 1873, before the honorable Ward Hunt, justice, and a jury, at which day and place last aforesaid came the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury summoned to try the said issue, being empannelled and sworn, after hearing the evidence offered in said cause, say upon their oaths that the said defendant is guilty of the premises above laid to its charge, in manner and form as the said plaintiff hath above complained against it, and they assess the damages of said plaintiff, by reason of the premises, over and above his costs and charges by him about his suit in this behalf expended, to three thousand one hundred and twenty-five dollars and twenty cents.

20 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the village of Canandaigua, on Thursday, the 19th day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Ward Hunt, justice.

WILLIAM L. MATSON
vs.
THE TOWN OF VENICE.

On motion of Warren T. Worden, counsel for defendant,

Ordered, that the defendant have sixty days in which to make and serve a bill of exceptions, and that the plaintiff have the same time to prepare amendments thereto, and that in the meantime all other proceedings be stayed.

21 Therefore it is considered that the said plaintiff, William L. Matson, do recover against the said defendant, The Town of Venice, his said damages by the jurors aforesaid, in form aforesaid assessed; and also one hundred and two dollars and seventy-seven cents for his costs and charges by the court here adjudged of increase to the said plaintiff with his assent; which said damages, costs, and charges in the whole amount to three thousand two hundred and twenty-seven dollars and ninety-seven cents.

And said defendant in mercy, &c.

Judgment signed this 15th day of September, A. D. 1873.

CHARLES MASON, *Clerk.*

(Indorsed:) U. S. circuit court, north. dist. of N. Y. William L. Matson vs. The Town of Venice. Judgment record. David Wright, plff.'s atty. Damages, $3,125.20; costs, 102.77—$3,227.97. Filed September 15, 1873, 5 o'clock p. m.

22 *Bill of exceptions on behalf of the defendant.*

Circuit court of the United States, second circuit, northern district of New York.

THE TOWN OF VENICE
ads.
WILLIAM L. MATSON.

Afterwards, to wit, at a circuit held at the village of Canandaigua, in and for the northern district of the State of New York, on the seventeenth day of June, one thousand eight hundred and seventy-three, by and before the Hon. Ward Hunt, one of the associate justices of the Supreme Court of the United States, came the parties aforesaid by their attorn*ies* aforesaid, and also by their respective counsel, and the issues joined came on to be tried by and before said judge and a jury, and the said plaintiff, in order to maintain the issues on his part, produced and read in evidence the act of the legislature of the State

23 of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad, passed April 16, 1852."

The plaintiff then produced and read in evidence a certified copy of

the articles of incorporation of the Lake Ontario, Auburn and New York Railroad Company, mentioned and referred to in the pleadings in this cause, which articles of association provided for the construction and operation of a railroad from some point on Little Sodus Bay, in the county of Cayuga and State of New York, passing through the towns of Sterling, Victory, city of Auburn, and towns of Fleming, Scipio, Venice, and Genoa, in said county of Cayuga, and into the county
24 of Tompkins, in said State of New York, to a point on the Cayuga and Susquehannah Railroad, in said county of Tompkins, about seven miles from Ithaca. The said plaintiff then produced the two alleged bonds, coupons, and clerk's certificate mentioned and referred to in the complaint in this cause, and offered to prove that the signatures to the same were genuine, and that the said Calvin King was elected supervisor, and the said Jonas Wood and Isaac Smith railroad commissioners, on the first day of March, eighteen hundred and fifty-three, that being the day appointed by law for holding the town meeting for the election of town officers in that year; and to the proving of which the counsel for said defendant made severally and separately the same objections which he made to the reading of said several bonds and coupons in evidence, as is hereinafter stated and set forth; and which said
25 several objections his honor the judge severally and separately overruled; and to which said several and separate rulings the counsel for the said defendant then and there severally and separately excepted, and the same were then & there severally and separately noted.

The counsel for said plaintiff then proved said signatures to be genuine, & that the said King was elected supervisor, and the said Wood and Smith railroad commissioners at said town meeting held in and for said town of Venice, on the said first day of March, eighteen hundred and fifty-three. The counsel for said plaintiff then offered to read the said certificate of the clerk of Cayuga County in evidence, which certificate, under the hand of said clerk, was indorsed on each of said bonds; and to which the counsel for said defendant then and there ob-
26 jected, because there was no statute or rule of law of said State authorizing or empowering the clerk to make any such certificate. His honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted. The said certificate was then read in evidence, in the words and figures following, to wit:

"CAYUGA COUNTY CLERK'S OFFICE.

"I, Edwin B. Marvine, clerk of the county of Cayuga, hereby certify that a paper purporting to be the written assent of two-thirds of the resident tax-payers of the town of Venice, with the affidavit required by sec. 1 of the act referred to by its title in the foregoing bond, has been filed in this office, dated Auburn, May 16, 1853.

(Signed)

"E. B. MARVINE,
"*Clerk of Cayuga County.*"

The counsel for said plaintiff then called as a witness one Ly-
27 man C. Comstock, who, being duly sworn, testified as follows: I have with me from the files of said office the written assents and affidavit annexed in the case of The Town of Venice. They were filed in said office on the third day of November, 1852, and on which there are two hundred and fifty-nine names in the aggregate, and which were signed to assents, of which the following is a copy, viz:

"We, the undersigned resident tax-payers of the town of Venice, in the county of Cayuga, do hereby consent that the supervisor and assessors of said town may borrow, on the faith and credit of said town, such sum of money as they may deem necessary, not exceeding twenty-five thousand dollars, for a term not exceeding twenty years, at such a rate of interest as may be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signa-
28 tures, a bond or bonds, in which the interest shall be made payable annually or semi-annually during the term said money may be borrowed, and the principal and interest made payable in such sums and at such times and places as shall be agreed upon and expressed in the bonds to be executed, and that the monies so borrowed may be paid to the president and directors of a railroad company, organized according to the requirements of the general railroad law, for the purpose of constructing a railroad connecting Lake Ontario with the Susquehannah and Cayuga Railroad Company, and passing through the city of Auburn, upon the stock of said railroad company, to be subscribed for and taken by said supervisor and assessors in the name of said town."

There is endorsed on said assent an affidavit, of which the following is a copy:

"STATE OF NEW YORK,
"*Cayuga County, ss:*

"Luke H. Mills, supervisor of the town of Venice, in said
29 county, and William Jones, one of the assessors of said town, being duly sworn, depose and say, and each for himself says, that the persons whose names are subscribed to the several foregoing written assents hereto attached comprise two-thirds of the resident tax-payers of said town of Venice on its assessment-roll next previous to the date hereof.

"Dated October 30, 1852.

"LUKE H. MILLS,
"*Supervisor.*
"WILLIAM JONES,
"*Assessor.*

"Subscribed and sworn to before me this 30th day of October, 1852.
"LYMAN MURDOCK,
"*Justice of the Peace in said County.*"

And the counsel for said plaintiff then offered to read said assents and said affidavits in evidence, and to which the counsel for said defendant objected, on the ground that said plaintiff must first prove that the signatures to said assents are the genuine signatures of those
30 whose names purport to be signed to the same; and which objection was then and there overruled by said court; and to which ruling and decision the counsel for said defendant then and there, in due time and form, excepted, and the same was then and there duly noted by said court.

And the said assents and the heading thereto and the said affidavit was then and there read in evidence by said counsel for said plaintiff.

The counsel for said defendant also, in due time, objected to the reading of the affidavit in evidence, on the ground that the same was not legitimate proof in the cause, and also because the word "filed" was not in said affidavit, the said affidavit not averring that the assets

thereto attached and filed as aforesaid comprise two-thirds of the resident tax-payers as appeared on any assessment-roll of said town,
31 as required by said statute; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant excepted; and the same was there and then noted.

The counsel for said plaintiff then offered to read in evidence the said several bonds, with the coupons thereto attached, as mentioned and referred to in said complaint, and to which the counsel for the defendant objected, and contended that the alleged bonds having been issued under a special statute, and that statute having pointed out and provided the mode and manner by which the money should be raised with which to pay them; that the said statute formed a part and portion of the alleged bonds, as much so as if the same was incorporated in them, and
32 that the payment of the same must be enforced in the mode and manner pointed out by the statute, and this action could not be maintained. His honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted. The counsel for the defendant then and there objected to the reading of said bonds and coupons in evidence, unless it was proved that the signatures to said alleged assents of the alleged tax-payers of said town, as filed in the clerk's office of Cayuga County, was genuine, and, in fact, signed by the persons whose names were attached to the same, and that the same could not be proved by said affidavit; but his honor the judge then and there overruled said objection; and to which ruling and de-
33 cision the counsel for said defendant then and there excepted, and the same was then and there noted. The counsel for defendant then and there objected to the reading of said bonds and coupons in evidence, because the said affidavit did not conform to the requirements of the statute, as above mentioned; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted. The counsel for said defendant then and there contended that until the genuineness of the signatures to said alleged assents were proved in some other way than by said affidavit there was no evidence that the said Calvin King, Jonas Wood, and Isaac Smith had any power or authority to execute said alleged bonds, or do anything
34 under said act; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendants then and there excepted, and the same was then and there noted.

The counsel for said defendant then objected to the reading of said bonds and coupons in evidence, and contended that the said Calvin King, Jonas Wood, and Isaac Smith could not become agents of said town under said act for the purpose of executing said alleged bonds prior to the obtaining and filing of the assents as required by said act, and until after such assent had been obtained and filed as aforesaid; and that the plaintiff was bound to prove in some way other than the production of said affidavit by the clerk of Cayuga County from
35 the files of said office that the signatures to said assent were genuine, and signed or authorized to be signed by the persons whose names appear to be thereto attached; but his honor the judge decided otherwise, and overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted. The counsel for said defendant also then and there contended and insisted that the recitals in said alleged bonds or in the testatum clause to said bonds were not evidence that the

prior conditions required by said act to the issuing of said bonds had been complied with, and that the right, power, and authority of said Calvin King, Jonas Wood, and Isaac Smith to execute said bonds could not be proved by the recitals in said bonds or in said testatum clause to said bonds; that under the act in question they could not prove
36 their own power and authority to execute or issue the same by recitals in said bonds or in said attestatum clause to the bonds which they themselves should execute; and, if so, that the same were not sufficient for that purpose; but his honor the judge decided otherwise; & to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then objected to the reading of said alleged bonds in evidence, because by the terms of said bonds the first installment or payment of interest was made payable in a less time than six months after the date of said bonds, to wit, on the first day of July thereafter, and that, therefore, they did not conform to the requirements and conditions of said act, and were, therefore, not such bonds as
37 were authorized by the act in question; but his honor the judge overruled said objection, and decided that said bonds were in conformity with the requirements and conditions of the statutes in question; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then objected to the reading of the said several alleged bonds and coupons in evidence, because that by making seven per cent. interest payable every six months, the interest secured to be paid in and by the same exceeds seven per cent. per annum; but his honor the judge overruled said objection; and to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there noted. The counsel for
38 said defendant then objected to the reading of said alleged bonds and coupons in evidence, unless it was proved that they were executed and delivered for money borrowed; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The said several objections to the reading of said bonds and coupons in evidence having been overruled & excepted to as aforesaid, the counsel for said plaintiff then produced the said several bonds with the said several semi annual interest-coupons thereto attached, from July first, eighteen hundred and sixty-seven, to January first, eighteen hundred & seventy-three, and the said bonds, with the interest-coupons which had become due and payable within six years pre-
39 vious to the commencement of this suit.

The counsel for said plaintiff then contended that the said plaintiff had a right to recover interest upon each of said coupons from the time when it became due up to the day of the trial of this suit, and to which the counsel for said defendant then and there objected; and contended that the said plaintiff could only recover simple interest, & could not compound the same by casting interest upon interest; but his honor the judge decided otherwise; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted by the court. Said bonds and the coupons thereto attached, from and including that which became due July first, eighteen hundred and sixty-seven, to and including that which became due January 1, 1873, were then read in evidence.

40 The said bonds were exact duplicates of each other except as

to their numbers, one being numbered 6 and the other being numbered 7, and a copy of one of which said bonds is hereunto annexed marked "Schedule A."

The interest-coupons were also exact copies of each other, except as to the time of payment and the number of the bonds to which they were attached, a copy of one of which coupons is hereunto annexed marked "Schedule B."

The plaintiff then proved the interest and principal, according to the ruling aforesaid, to be three thousand one hundred and twenty-five dollars and twenty cents, and rested.

The counsel for the said defendant then asked the court to rule and decide that on the above proof the plaintiff was not entitled to
41 recover; but his honor the judge declin' to so rule or decide, but, on the contrary thereof, ruled and decided that on the facts above proved, the plaintiff was entitled to recover; and to which ruling and decision the counsel for said defendant excepted, and the same was then and there noted.

The counsel for said defendant then offered to show that the bonds in suit were delivered originally and in the first instance to said railroad company mentioned in the pleadings, for stock and not for money borrowed, and to which the counsel for said plaintiff then and there objected; and the court sustained said objection, and excluded the testimony; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The said defendant then offered to show that Benjamin Gould,
42 esq., of Cayuga County, was the owner and holder of the bonds now in suit, in 1854, and continued to be the owner and holder of them until some time on or about the first day of September, 1867, when he disposed of the same, but not to this plaintiff, and to which the counsel for said plaintiff then and there objected; and his honor the judge excluded the evidence thus offered; and to which ruling and decision the counsel for the defendant then and there excepted, and the same was then and there noted.

The said defendant then offered to show that the said Benjamin Gould commenced an action against the said Town of Venice in the supreme court of the State of New York, some time on or about the ninth day of August, eighteen hundred and fifty-eight, on said bonds, to recover the interest then unpaid on the same, and that such proceedings were
43 thereupon had in said action, that a judgment was reversed in said action against said town for interest then due and unpaid on said bonds, and from which judgment the said town appealed to the court of appeals of said State where said judgment was reversed, and at the same time that the case of Savin vs. The Town of Genoa was reversed, as reported in the 23d of New York, 439, &c., and for the same reasons, and that said Gould then discontinued and withdrew said suit; and to which the counsel for said plaintiff then and there objected and his honor the judge sustained the objection and excluded the proof offered; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then and there contended that
44 the proof thus offered, if admitted in evidence, would change the burden of proof, and compel the plaintiff to prove that he was in fact a bona-fide holder for value; and that under such proof and the circumstances of the case, the production of said bonds by him did not prove that fact; but his honor the judge decided otherwise; and to

which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then offered to show that some of the signatures to said assents were not genuine, and that others were duplicates; and that, in point of fact, the same never were signed by two-thirds of the resident tax-payers of said town, as required by said act, and to which the counsel for the said plaintiff objected; and his honor the judge, after expressing great doubts on the subject, concluded
45 to and did exclude the evidence offered; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then referred to the general statutes of the State of New York, under and by virtue of which it was claimed that said Town of Venice was incorporated, and contended that the said town was not such a corporation as made it a citizen, but was a part and portion of the machinery of the State government, and a citizen of the State, and that this court had no jurisdiction over it or in this matter; but his honor the judge decided otherwise; and to which ruling and decision of his honor the counsel for said defendant excepted, and the same was then and there noted.

Here the testimony closed.

46 The counsel for said defendant then requested his honor the judge to charge the jury that on the above proofs the plaintiff was not entitled to recover. His honor the judge declined so to charge the jury; and to which refusal the counsel for said defendant then and there excepted, and the same was then and there noted. His honor the judge, at the request of the plaintiff's counsel, then charged the jury that, on the proofs as above stated, the said plaintiff was entitled to a verdict for three thousand one hundred and twenty-five dollars & twenty cents, and directed them to find a verdict accordingly; and to which charge and direction of his honor the judge to the said jury, the counsel for said defendant then and there excepted, and the
47 same was then and there noted by the court. The jury then, under the direction of the court, as aforesaid, found their verdict for the said plaintiff for the said sum of three thousand one hundred and twenty-five dollars & twenty cents. And because none of the said exceptions & offers so offered and made, as aforesaid, to the opinions, decisions, and rulings of the said judge do appear upon the record of the said trial, therefore, on the prayer of the said defendant, by its said counsel, his honor the judge hath to this bill of exceptions set his hand and seal, according to the statute & the rules and practice of this court in such case made and provided, this twelfth day of September, 1873.

WARD HUNT, [L. S.]
Asso. Just. Sup. Ct. U. S.

WARREN A. WORDEN,
Deft's Atty., Auburn, N. Y.

WARREN T. WORDEN,
Of Counsel.

48 No. 6.] SCHEDULE A.

STATE OF NEW YORK, *Cayuga County:*

Seven per cent. loan not exceeding $25,000.

Be it known that The Town of Venice, in the county of Cayuga, and State of New York, in pursuance of an act of the legislature of the said

State, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehannah Railroad," passed April 16th, 1852, and for the purpose of aiding the construction of the Lake Ontario, Auburn, and New York Railroad, owes and promises to pay to , or bearer, one thousand dollars, with interest at the rate of seven per cent., payable semi-annually, on the first days of January and July in each year, on surrender of the coupons hereto attached, at the Bank of the State of New York, in the city of New York, the principal to be re-imbursable at the same place at the expiration of twenty years from the first day of January, 1853.

49 In testimony whereof the supervisor and commissioners of the town of Venice have, pursuant to the provisions of the act aforesaid and the written assent of two-thirds of the resident tax-payers of said town, obtained and filed in the office of the clerk of the county of Cayuga, hereunto subscribed their names, this second day of March, A. D. 1853.

CALVIN KING,
Supervisor.

JONAS WOOD,
ISAAC SMITH,
Commissioners.

SCHEDULE B.

$35. The Town of Venice, in the county of Cayuga, hereby acknowledge that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of January, 1868, being interest due on that day on bond No. 6.

CALVIN KING,
Supervisor.

JONAS WOOD,
ISAAC SMITH,
Commissioners.

(Endorsed:) Circuit court United States, second circuit, northern district of New York. The Town of Venice a/s. William L. Matson. Defendant's bill of exceptions. Warren A. Worden, deft's atty., Auburn, N. Y. Filed September 12, 1873.

50 Know all men by these presents that we, Herman Mosher, Calvin Whitman, Merchant B. Holly, Gilbert A. Young, George S. Young, Edwin Lester, James Heaton, Garra Kimball, Albert Lester, John G. Young, George W. Young, Volney Lester, and Orrin Lester, all of the town of Venice, in the county of Cayuga and State of New York, are held & firmly bound unto William L. Matson, in the sum of six thousand and five hundred dollars, to be paid to the said William L. Matson, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this sixteenth day of September, one thousand eight hundred and seventy-three.

Whereas The Town of Venice, in the county of Cayuga and State of New York, is about to prosecute a writ of error from the Supreme Court

of the United States to remove the judgment rendered by the
51 circuit court of the United States for the second circuit and Northern district of the State of New York, in a certain action in which the said William L. Matson was plaintiff and the said Town of Venice was defendant, and in which said action a judgment has been rendered in said circuit court in favor of the said plaintiff and against the said Town of Venice for the sum of three thousand two hundred and twenty-seven dollars and ninety-seven cents, damages and costs, and the record thereof filed with the clerk of said circuit court at his office in the city of Utica, on the fifteenth day of September, one thousand eight hundred and seventy-three:

Now, therefore, the condition of this obligation is such, that if the said Town of Venice shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

HERMAN MOSHER.	[L. S.]	GARRA KIMBALL.	[L. S.]
CALVIN WHITMAN.	[L. S.]	ALBERT LESTER.	[L. S.]
M. D. HOLLEY.	[L. S.]	JOHN G. YOUNG.	[L. S.]
G. A. YOUNG.	[L. S.]	GEO. W. YOUNG.	[L. S.]
G. S. YOUNG.	[L. S.]	VOLNEY LESTER.	[L. S.]
52 EDWIN LESTER.	[L. S.]	ORRIN LESTER.	[L. S.]
JAMES HEATON.	[L. S.]		

53 Circuit court & northern district of New York.

UNITED STATES OF AMERICA,
State of New York, Cayuga County, ss:

On this 18th day of September, 1873, before me, the subscriber, personally appeared Herman Moshier, Calvin Whitman, Merchant D. Holley, Gilbert A. Young, George S. Young, Edwin Lester, James Heaton, Garra Kimball, Albert Lester, John G. Young, George W. Young, Volney Lester, and Orrin Lester, to me personally known to be the same persons described in and who executed the within & annexed instrument, and acknowledged that they executed the same.

WARREN A. WORDEN,
Notary Public, Cayuga County, N. Y.

54 UNITED STATES OF AMECICA,
Northern District of New York,
State of New York, Cayuga County, ss:

Herman Moshier, Garra Kimbal, Gilbert A. Young, Calvin Whitman, & James Heaton, the sureties in the within and annexed bond, being duly sworn, depose and say, and each for himself says, that he is a householder and freeholder, resident within said county and district, to wit, in the town of Venice aforesaid, and that he is worth five thousand dollars over and above all debts & liabilities which he has incurred.

HERMAN MOSHIER.
GARRA KIMBALL.
GILBERT A. YOUNG.
CALVIN WHITMAN.
JAMES HEATON.

Sworn & subscribed to before me this eighteenth day of September, 1873.

WARREN A. WORDEN,
Notary Public, Cayuga County, N. Y.

(Indorsed:) Town of Venice bond, penalty $6,500.00. Matson suit.

I approve of the within bond as to the form of the bond & the sufficiency of the securities to stay execution.

WARD HUNT.

Filed Sept. 22, 1873.

55 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the judges of the circuit court of the United States for the second circuit & northern district of New York, greeting:

Because, in the records a proceedings, and also in the rendition of judgment of a plea which is in the said circuit court and northern district of New York, before you, between William L. Matson, plaintiff, and The Town of Venice, in the county of Cayuga, & State of New York, a manifest error hath happened, to the great damage of the said town of Venice, as by its complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full & speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly & openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then & there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws & customs of the United States should be done.

Witness the Hon. Nathan Clifford, senior associate judge, and Acting Chief-Justice of the said Supreme Court, the 22d day of September, in the year of our Lord one thousand eight hundred & seventy-three.

CHARLES MASON,
Clerk of the Circuit Court of the United States for the Northern District of New York.

Allowed by—

WARD HUNT.

(Indorsed:) Supreme Court of the United States. The Town of Venice, plaintiff in error. William L. Matson, defendant in error. Writ of error. Filed Sept. 22, 1873.

56 UNITED STATES OF AMERICA, *ss:*

To WILLIAM L. MATSON, greeting:

You are hereby cited & admonished to be & appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the second circuit & northern district of New York, wherein The Town of Venice is plaintiff, and you are defendant, in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Nathan Clifford, senior associate judge, & Acting Chief-Justice of the said Sureme Court of the United States, this 21st day of September, in the year of our Lord one thousand eight hundred & seventy-three.

WARD HUNT.

57 UNITED STATES OF AMERICA,
Northern District of New York, Cayuga County, ss:

Warren A. Worden, of Auburn, in said county & district, being duly sworn, says that, on the 23d of Sept., 1873, he personally served a copy of the within citation on David Wright, esq., the plaintiff's attorney, by handing the same to & leaving it with him personally at his office in Auburn aforesaid.

WARREN A. WORDEN.

Sworn & subscribed to before me this 23d day of September, 1873.
CHARLES L. ADAMS,
U. S. Commissi'n'r Northern Dist. of N. Y.

(Indorsed:) Supreme Court of the United States. The Town of Venice, plaintiff in error, vs. William L. Matson, defendant in error. To keep & file.

Due & personal service of a copy of the within citation is admitted. Sept. 23d, 1873.

D. WRIGHT,
Pltff.'s Atty.

Filed Sept. 24, 1873.

58 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of William L. Matson vs. The Town of Venice.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Utica, in said district, this 3d day of October, A. D. 1873.

[SEAL.] CHARLES MASON, *Clerk.*

(Indorsement on cover:) No. 267. The Town of Venice, plaintiff in error, vs. William L. Matson. N. New York, C. C. U. S. Filed 16th October, 1873.